

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**JAI SANTOSHI MA, INC. and
BHUPEN PATEL**

Iowa County, Iowa

ADMINISTRATIVE ORDER

NO. 2012-AQ- 17

NO. 2012-SW- 16

TO: Jai Santoshi Ma, Inc.
Bhupen Patel, Registered Agent
1845 Glen Oaks Drive
West Des Moines, Iowa 50266

Bhupen Patel
265 62nd Court
West Des Moines, Iowa 50266

I. SUMMARY

Due to the potential environmental and health hazards associated with asbestos, this administrative order requires you to comply with the provisions stated in Section V "Order" of this administrative order.

Any questions regarding this administrative order should be directed to:

Relating to technical requirements:

Jim Kacer, Field Office 6
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353
Phone: 319/653-2135

Relating to appeal rights:

Kelli Book, Attorney
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Appeal, if any, addressed to:

Director, Iowa Dept. of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules

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promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part, DNR has jurisdiction to issue this administrative order.

III. STATEMENT OF FACTS

1. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to follow proper removal and disposal techniques of the regulated asbestos containing material may create an environmental hazard to the workers and general public through the likely release of asbestos fibers.

2. Jai Santoshi Ma, Inc. (Jai Santoshi Ma) owns a parcel of land located at 120 Hawkeye Drive; Williamsburg, Iowa. A truck stop was located on the parcel and was formerly operated as the Middle America Truck Stop. The site is designated as a leaking underground storage tank (LUST) site. The truck stop is being demolished by the demolition contractor Ken Odom. Bhupen Patel is acting as the operator of the site in that he is directing the demolition activities on site and is the regulatory contact with state agencies involved in this matter.

3. On May 25, 2012, DNR Field Office 6 received a complaint that Mr. Patel had begun demolition of the truck stop without conducting an asbestos inspection. The complainant stated that Mr. Patel had proposed burying the debris onsite. Further review of DNR's asbestos notifications indicated that the DNR had not received the 10-day asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) notification for the demolition.

4. On May 30, 2012, Jim Kacer, DNR Field Office 6 environmental specialist, investigated the complaint. When Mr. Kacer arrived he spoke to Ken Odom. Mr. Odom explained that he had been hired to demolish the building down to ground level, leaving the lower level of the truck stop intact. Mr. Kacer told Mr. Odom that the complainant had stated that Mr. Patel was going to bury the debris on site. Mr. Kacer explained that burying the debris on site was against the DNR's regulations. Mr. Odom stated that he had not been instructed to bury the debris on site. Mr. Kacer explained that the demolition would have to stop until an asbestos inspection was conducted and a notification was submitted to the DNR. Mr. Kacer also explained that if an asbestos inspection had not been conducted prior to the demolition that all the debris would have to be disposed of as asbestos containing material at the landfill. Mr. Odom provided Mr. Kacer with Mr. Patel's telephone number. Mr. Kacer walked around the site and observed the partially demolished building with piles of demolition waste on the ground as well as demolition debris in a roll-off container. The demolition waste contained dry suspect asbestos containing material including roofing material, drywall, textured ceiling coating, and sealants and adhesives. Mr. Kacer documented his visit through photographs and an inspection report.

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5. On May 31, 2012, Mr. Kacer spoke to Mr. Patel on the telephone. Mr. Patel confirmed that an asbestos inspection had not been conducted at the site prior to the start of the demolition. Mr. Kacer told Mr. Patel that the demolition activities would have to stop until the structure was inspected for asbestos and an asbestos notification was submitted to DNR. Mr. Kacer explained that the debris could not be buried on site. Mr. Patel stated that he had not intended to bury the debris on site and that he wanted to comply with the requirements. He stated that he had already contacted his environmental consultant, Gaylen Heisterman with ATC Associates, for assistance.

6. On June 1, 2012, Mr. Heisterman emailed Mr. Kacer to inform him that someone from ATC was on site collecting samples of suspect material.

7. On June 4, 2012, DNR issued a Notice of Violation letter to Mr. Patel for the asbestos violations discovered by Mr. Kacer during his investigation in May. The letter also provided information about the solid waste and open burning regulations. The letter required Mr. Patel to do the following: 1) immediately cease all demolition activities until the structure and debris are inspected for asbestos and all identified asbestos is abated; 2) if asbestos containing material is found that a notification be submitted to DNR; 3) if asbestos containing material is found in the debris that all debris be disposed of as asbestos containing material at the landfill; and 4) if the demolition waste does not contain asbestos containing material that it be disposed of at the landfill. The letter informed Mr. Patel that the matter may be referred for further enforcement.

8. On June 4, 2012, John Avery, Williamsburg Public Works Director, notified DNR Field Office 6 that the building had been completely demolished, except the lower level, over the weekend.

9. On June 12, 2012, Mr. Heisterman contacted Mr. Kacer and stated that the demolition waste was being buried on site. Mr. Heisterman stated that he told Mr. Patel that burying the demolition waste on site was illegal. Mr. Heisterman also stated that several of the materials sampled were asbestos containing, but that he could not send the results to the DNR until he had permission from Mr. Patel to do so. Mr. Heisterman stated that several roll-off containers of demolition waste had been taken off-site, possibly to the Iowa County Landfill. Following the call from Mr. Heisterman, Mr. Kacer contacted Iowa OSHA and requested that Iowa OSHA investigate possible worker exposure.

10. On June 14, 2012, Mr. Kacer and Brian Lee, DNR Field Office 6 environmental specialist, returned to the truck stop site. Prior to arriving on site, Mr. Kacer spoke to Mr. Avery on the telephone. Mr. Avery and another Williamsburg Public Works employee were on site and stated that Mr. Odom was sorting metal out of the demolition debris. Mr. Avery told Mr. Odom to stop and Mr. Odom refused. Mr. Odom left the site with a load of metal. Mr. Kacer and Mr. Lee located Mr. Odom in town and directed him to return to the site. Mr. Odom returned to the site, wetted the load of metal, and dumped the metal into a small pile of debris, with no visible emissions as he did so. Mr. Odom stated that Mr. Patel did not direct him to stop demolition work at the site and did not tell him the

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debris was asbestos containing material. During the field office visit the wind was blowing from the south and visible clouds of dust were being picked up from the ground surface and the piles of demolition waste. The wind was from the south during the entire visit, blowing toward a commercial area located north of Interstate 80. During the visit, an employee of Windstream who had come to repair a cable that had been cut during excavation was also at the site. Mr. Kacer and the Windstream employee proceeded to the excavation area on the north side of the property. Demolition waste was observed in the excavated area. Mr. Kacer advised the Windstream employee that the area was likely contaminated with asbestos and possibly petroleum and advised him to not enter the excavation area. The Windstream employee then left the area. Mr. Avery stated that Cox Sanitation had transported eight roll-off containers loaded with demolition waste from the site to the Iowa County Landfill. Mr. Kacer documented his visit through photographs and an inspection report. He also collected three samples of suspect material. Two of samples indicated the presence of regulated asbestos containing material. A sample of roofing material with a white powdery substance indicated the roofing material contained less than 1% asbestos, but the white substance contained 10% chrysotile asbestos. A sample of friable textured surfacing material contained 10% chrysotile asbestos.

11. On June 15, 2012, Mr. Kacer spoke to Ron Cox with Cox Sanitation. Mr. Cox stated that his company hauled 8 roll-off containers of demolition waste from the site to the Iowa County Landfill for a total of 51 tons of debris. He stated that he was not told that the debris contained asbestos. Following this conversation, Mr. Kacer contacted the Iowa County Landfill and informed the landfill that the containers contained asbestos materials.

12. On June 18, 2012, DNR issued another Notice of Violation letter to Mr. Patel that included the additional asbestos and solid waste disposal violations discovered during the June 14th investigation. The letter required Mr. Patel to cease demolition activities on site until a notification has been submitted and to conduct further demolition activities at the site in accordance with the regulations. The letter informed Mr. Patel that the matter was being referred for further enforcement.

13. On June 19, 2012, Mr. Kacer spoke to Cory Albers with Active Thermal Concepts who was contacted by AIC Associates to provide an asbestos abatement estimate for the site. By the time Mr. Albers arrived at the site during the week of June 4, the building had been demolished and no estimate was necessary for pre-demolition abatement.

14. On June 19, 2012, Mr. Kacer requested that the University of Iowa Hygienic Laboratory point count the surfacing material sample. The laboratory contacted Mr. Kacer later in the day with the results. The point count method indicated 14% chrysotile asbestos. On June 20, 2012, a revised Notice of Violation letter was sent to Mr. Patel with the revised asbestos results.

15. On June 21, 2012, Mr. Kacer contacted Mr. Avery. Mr. Avery drove by the site and indicated that it did not appear to have changed since the June 14 visit. Mr. Avery did advise the nearby hotel of the potential asbestos exposure from the site.

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16. On June 21, 2012, Mr. Kacer and Dennis Ostwinkle, DNR Field Office 6 supervisor, contacted Mr. Patel. He stated that he received the Notice of Violation and would like guidance from the DNR. The field office personnel told Mr. Patel that the site was a public health hazard and that it was important to abate the area as soon as possible. Mr. Patel stated that he would be out of town until June 25, 2012 and that he would deal with it at that time. The field office personnel stressed that he should start dealing with the site immediately.

17. On June 21, 2012, Mr. Kacer spoke with Peggy Peterson, Iowa OSHA. Ms. Peterson said that on June 15, 2012, Iowa OSHA informed Mr. Patel that he would need to demarcate the contaminated area and limit access to the site.

18. On June 21, 2012, Mr. Kacer spoke to Mr. Hiesterman. Mr. Hiesterman stated that ATC Associates had cut ties with Mr. Patel and that the asbestos reports and other correspondence between ATC Associates and Mr. Patel would have to be provided to the DNR by Mr. Patel.

19. On June 22, 2012, Mr. Kacer spoke to Mr. Avery. Mr. Avery stated that the site had not changed since his visit the prior day.

20. On June 24, 2012, Mr. Kacer visited the site and noted that the site had not changed since the June 14 visit. On June 25, 2012, Mr. Kacer spoke to Mr. Avery who said that a blue tarp had been placed on the debris pile north of the building, but that the remainder of the site remained the same.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC chapter 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal NESHAP, found at 40 CFR part 61, subpart M.

3. 40 CFR 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to commencement of demolition or renovation. Mr. Patel stated there was not a thorough asbestos inspection prior to the demolition project at the truck stop. The above facts indicate a violation of this provision.

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4. 40 CFR section 61.145(b)(1) requires written notification of demolition to be submitted to the DNR prior to beginning renovation. The specific requirements for this notification are contained in the subsection. The DNR has not received a notification for the demolition project. The above facts indicate a violation of this provision.

5. 40 CFR section 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the procedures. The facts in this case indicate that the parties were not in compliance with these provisions when the demolition project occurred.

6. 40 CFR 61.145(c)(1) provides that all regulated asbestos containing material shall be removed from a regulated facility before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. DNR Field Office 6 personnel observed regulated asbestos containing material that had not been removed prior to the demolition project. The facts in this case indicate violations of this provision.

7. 40 CFR 61.145(c)(6)(i) provides that all regulated asbestos containing material, including material that has been removed or stripped, shall be adequately wet and shall remain wet until collected and contained. DNR Field Office 6 personnel found dry regulated asbestos containing material exposed to the open air at the demolition site. The facts in this case indicate violations of this provision.

8. 40 CFR 61.145(c)(8) provides that effective one year after promulgation of this regulation, no regulated asbestos containing material shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. The facts in this case indicate there was not a trained supervisor on site during the demolition despite the fact regulated asbestos containing material was being disturbed by the demolition activities. The above facts indicate noncompliance with this provision.

9. 40 CFR 61.150 contains standards for asbestos waste disposal for demolition and renovation operations. Specifically, 40 CFR 61.150(a)(1)(iii) provides that all asbestos containing waste materials, while wet, shall be sealed in leak-tight containers or wrapping. The facts in this case indicate that the parties were not in compliance with these provisions when the demolition project occurred.

10. 40 CFR 61.150(b) states that all asbestos containing waste material shall be deposited as soon as is practical by the waste generator at a waste disposal site operated in accordance with the provisions of 40 CFR 61.154. At least eight roll-off containers of asbestos containing demolition debris was disposed of as construction and demolition debris rather than asbestos containing material at the landfill. The above facts indicate violations of this provision.

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11. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

12. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. Some of the demolition debris from the truck stop has been buried on site rather than being disposed of at a permitted landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered that Jai Santoshi Ma and Bhupen Patel immediately do the following:

1. The remaining demolition debris on site shall not be buried or burned;
2. Immediately take steps to limit access to the site. Only authorized, properly trained personnel shall be allowed access to this site;
3. Under the supervision and guidance of a licensed asbestos abatement contractor, immediately wet the exposed asbestos containing debris, containerize it, and maintain it in a wet condition until properly disposed of as asbestos containing material at permitted landfill. This includes exposed debris in the excavated area;
4. Under the supervision and guidance of a licensed asbestos abatement contractor, immediately begin abatement and proper disposal of the waste piles, debris, asbestos contaminated soil, and asbestos contaminated dust at the site;
5. Until asbestos has been cleaned from the paved areas where demolition waste has been dumped, collect and contain runoff from this area. Asbestos is designated as a priority pollutant pursuant to the Federal Clean Water Act and unpermitted discharges could be subject to additional enforcement action;
6. Determine the applicability of the stormwater permit requirements for soil disturbance related to the waste disposal area. If over 1 acre of soil was disturbed, the site is subject to the requirements of the Iowa General Permit No. 2;
7. Within 5 working days of receipt of this order, submit notification to DNR containing the following information:
 - Scheduled starting and completion dates of excavation of the buried waste.
 - Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the DNR may require changes in the emission control procedures to be used.
 - Procedures to be used to manage petroleum-contaminated soil if encountered during the excavation process, since this is a high-risk LUST site.

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- Location of any temporary storage site and the final disposal site;
- 8. Before initiating excavation activities at the site, contact Verne Schrunck (515-281-6704, DNR LUST Section) to determine if the LUST section has additional requirements regarding excavation at this high risk LUST site;
- 9. Upon DNR approval of the emission control procedures and petroleum-contaminated soil excavation procedures, immediately begin excavating and properly disposing of any demolition waste remaining at the site as asbestos-containing waste at a permitted sanitary disposal project, such as the Iowa County Landfill;
- 10. Provide landfill receipts to DNR within 10 days of disposal to document the proper disposal of the demolition waste;
- 11. All waste must be handled by personnel properly trained and licensed to handle asbestos-containing waste. This includes personnel involved in excavating the buried waste. Questions regarding asbestos licensing and permitting may be referred to Jeff Ellis, Iowa Occupational Safety and Health (IOSH), at ellis.jeff@dol.gov;
- 12. Because of the potential for petroleum contamination, personnel involved in excavation of the waste may be required to have current hazardous waste operations and emergency response (HAZWOPER) training (29 CFR 1910.120). Contact IOSH at (515) 281-7629 to discuss these requirements; and
- 13. Provide a copy of the administrative order to all contractors and subcontractors who work at this site.

VI. RESERVATION OF RIGHTS

This administrative order is being issued for the sole purpose of requiring immediate clean-up and further asbestos remediation at the property located at 120 Hawkeye Drive, Williamsburg, Iowa. DNR reserves the right to amend the administrative order or to bring an additional enforcement action to assess monetary penalties for the alleged violations addressed in this administrative order or to pursue referral to the Attorney General, to obtain injunctive relief and penalties or fines, pursuant to Iowa Code sections 455B.146, 455B.146A, and 455B.307. DNR reserves the right to bring an additional enforcement action or to pursue referral to the Attorney General, to obtain injunctive relief and penalties or fines, pursuant to Iowa Code sections 455B.146, 455B.146A, and 455B.307 for alleged violation not addressed in this administrative order which may have occurred during the project at the property located at 120 Hawkeye Drive, Williamsburg, Iowa. Additionally, DNR reserves the right to add additional parties to this administrative order or to additional enforcement actions. Nothing in this administrative order restricts or limits the administrative or judicial enforcement remedies available to the DNR or the state of Iowa for the violations referred to in this administrative order or any other violations which may have occurred at the property located at 120 Hawkeye Drive, Williamsburg, Iowa.

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VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.138 and 567 IAC chapter 7, a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 27th day of
June, 2012.

Norma Gentry, AQB; Kelli Book; Jim Kacer, FO 6; Dave Sheridan; EPA; VII C.4